

Customer No. 24498
Attorney Docket No. PU030179
Final Office Action Date: 06/09/2009

REMARKS

The Final Office Action mailed June 9, 2009 has been reviewed and carefully considered. Reconsideration of the above-identified application, in view of the above amendments and the following remarks, is respectfully requested.

Claims 1-22 are pending in this application. Claims 1, 2, 5, 12 and 22 have been amended. No new matter has been added.

§103 REJECTIONS

Claims 1, 4-7, 9, 12-14, and 19-22 were rejected under 35 USC 103(a) as being unpatentable over Fujisawa (US Pat No 7,352,726) in view of Skarica et al. (US Pat No 7,171,121, hereinafter Skarica) in view of Lemieux et al. (US Pat No 6,968,374, hereinafter Lemieux) in view of WO01/074096 to Pathak et al. (hereinafter Pathak).

Applicants submit that for at least the reasons discussed below claims 1, 4-7, 9, 12-14, and 19-22 are patentably distinguishable over the teachings of the suggested combination of references.

Applicants' independent claims 1, 5, 12 and 22 essentially now recite, *inter alia*:

"...determining whether to open a channel comprising an isochronous channel or an asynchronous channel in response to (based on) the priority code..."

The amendments are supported by the specification, e.g., paragraphs [0033] and [0036].

On page 5 of the Office action, the Examiner admits that Fujisawa, Skarica and Lemieux do not disclose determining a priority code associated with the data packet and establishing a channel in response to the priority code for communicating information in

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the stream of packets based on digital data to the second network, the second network having a communications protocol that allows for setup and communications over discrete channels of a reserved bandwidth.

The Examiner refers to Pathak as allegedly curing the deficiencies of Fujisawa, Skarica and Lemieux, stating that Pathak allegedly discloses using the presence of the priority code as an indication for setting up a channel for communicating information in said stream of packet based digital data [from a first communications network having a prioritized communications protocol] to a second communications network, the second communications network having a communications protocol that allows for set up and communications over discrete channels of a reserved bandwidth. However, "a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." *KSR*, 127 S.Ct. at 1741; *see also Grain Processing Corp. v. Am. Maize-Prods. Co.*, 840 F.2d 902, 907 (Fed.Cir.1988)

The Applicant believes this rejection is improper for at least the following reasons. Pathak involves a system and method for providing local loop telecommunications services through a wireless media, and namely, for providing such services for data and voice to provide efficient usage of available shared radio resources. However, Pathak's method is applicable to, and is taught only with respect to, communication between a base station and subscriber stations, and has nothing whatsoever to do with communication between separate networks, much less communication between a first network having a prioritized communication protocol and a second network which allows reservation of network resources, as per the present invention. Indeed, Pathak recites:

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"The SUC in each subscriber station communicates with a network utilization manager (NUM) to request network resources from the base station. The NUM determines the requirements, in data transmission capacity and/or QoS levels, for the desired connection and considers the utilization of the network resources at the base station, or sector of the base station, in determining whether to establish the desired connection."

See Pathak, Abstract.

Pathak's method simply involves connections between a base station and subscriber stations via a wireless network, and bears no relation to communication amongst heterogeneous networks (e.g., between Ethernet based devices and wireless devices) as in the present invention. Thus, Pathak's system and method is inapplicable to the presently claimed invention, and cannot and would not be properly combined with the Fujisawa, Skarica and Lemieux references. Further, even if combined, the combination would be unworkable due in part to the widely divergent nature of these references' objectives and problems to be solved. In particular, note that Fujisawa involves a communication method that can connect two different networks to form a single network without wasting MAC addresses, Lemieux involves a method for implementing a QoS mechanism in an IP network, Skarica involves a technique for providing an optical signal to a destination and Pathak involves a WLL system for managing radio data transmission capacity and network resources shared by a plurality of subscriber stations.

Nevertheless, assuming *arguendo*, that Pathak could be properly combined with the cited references, the combination fails to arrive at the presently claimed invention. As discussed above, Pathak was cited as allegedly curing the deficiencies of the cited references. However, Pathak merely discloses a base station determining and allocating network resources and establishing connections with subscriber stations accordingly.

Pathak is concerned with making connections within a *single* type of network between a

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base station and subscriber stations if the resources are available. Any alleged type of 'priority code' which is suggested as being taught in Pathak simply refer to parameters of the actual resources the proposed connection requires or deserves to determine whether to allocate network and radio resources to establish the connection:

"When NUM 224 wishes to establish a connection to a subscriber station 32, it determines the necessary resource requirements for the connection. When subscriber station 32 wishes to initiate a connection, it contacts base station 24 to forward a request to NUM 224. In either case, NUM 224 is informed of or determines the type of connection desired and NUM 224 considers the actual resources the proposed connection requires or desires."

See Pathak, page 13, line 30 to page 14, line 2.

However, this is to be distinguished from determining and establishing distinct types of channels for communication between two different types of networks, based on a priority code, as in the present invention. Indeed, in Pathak, there is no need for establishing distinct channels of any kind since the communications are being performed and connections are being established within a homozygous network. Namely, Fujisawa, Skarica, Lemieux and/or Pathak fail to disclose or suggest at least determining whether to open a channel comprising an isochronous channel or an asynchronous channel in response to the priority code. and using the presence of the priority code as an indication for setting up the channel for communicating information in said stream of packet based digital data to a second communications network, the second communications network having a communications protocol that allows for set up and communications over discrete channels of a reserved bandwidth, essentially as claimed in the independent claims 1, 5, 12 and 22.

Therefore, it is respectfully asserted that independent Claims 1, 5, 12 and 22 are patentably distinct and non-obvious over Fujisawa, Skarica, Lemieux and/or Pathak for at

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least the reasons set forth above. Claims 4, 6-7, 9, 13-14 and 19-21 each depend from one of claims 1, 12, 12 and 22. The dependent claims include the limitations of their respective independent claims and are therefore believed to be patentable and nonobvious for at least the reasons stated for claims 1, 5, 12 and 22.

Claim 2 was rejected under 35 USC 103(a) as being unpatentable over Fujisawa in view of Skarica in view of Lemieux in view of Pathak and further in view of Du et al. (US 6,181,947, hereinafter Du). Claims 3, 10 and 16 were rejected under 35 USC 103(a) as being unpatentable over Fujisawa in view of Skarica in view of Lemieux in view of Pathak and further in view of Brewer (6,657,999). Claims 8 and 15 rejected under 35 USC 103(a) as being unpatentable over Fujisawa in view of Skarica in view of Lemieux in view of Pathak as applied to claims 5 and 12 above, and further in view of Walke et al. (US 7,016,676, hereinafter Walke).

Claim 11 was rejected under 35 USC 103(a) as being unpatentable over Fujisawa in view of Skarica in view of Lemieux in view of Pathak as applied to claim 5 above, and further in view of Hamamoto et al. (6,038,233, hereinafter Hamamoto). Claim 17 was rejected under 35 USC 103(a) as being unpatentable over Fujisawa in view of Skarica in view of Lemieux in view of Pathak as applied to claim 12 above, and further in view of RFC 0793 (Transmission Control Protocol – Sept. 1981). Claim 18 was rejected under 35 USC 103(a) as being unpatentable over Fujisawa in view of Skarica in view of Lemieux in view of Pathak as applied to claim 12 above, and further in view of Naudus (US 2002/0016837).

The rejection of claims 2, 3, 8, 10, 11 and 15-18 is based, in part, on the contention that Fujisawa, Skarica, Lemieux and/or Pathak disclose or suggest the features

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of claims 1, 5, 12 and 22 from which such claims depend. However, in light of the above arguments with respect to claim 1, it is clear that the combination of Du, Brewer, Walke, Hamamoto, RFC 0793, and/or Naudus with Fujisawa, Skarica, Lemieux and/or Pathak is legally deficient, since, at the very least, as explained above, neither Fujisawa, Skarica, Lemieux and/or Pathak disclose or suggest the features of claim 1, from which claims 2, 3, 8, 10, 11 and 15-18 depend.

It is therefore respectfully submitted that the present invention is not disclosed or suggested by the cited references taken alone or in combination. Claims 1-22 are believed to be in condition for allowance for at least the reasons stated above. Early and favorable reconsideration of the case is respectfully requested.

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CONCLUSION

In view of the foregoing, Applicant respectfully requests that the rejections of the claims set forth in the Final Office Action mailed June 9, 2009 be withdrawn, that pending Claims 1-22 be allowed, and that the case proceed to early issuance of Letters Patent in due course.

It is believed that no additional fees or charges are currently due. However, in the event that any additional fees or charges are required at this time in connection with the application, they may be charged to applicant's representatives Deposit Account No. 07-0832.

Respectfully submitted,
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